

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 GREGORY TIIFT,

14 Defendant.

CASE NO. CR20-0168-JCC

ORDER

15 This matter comes before the Court on the motion of *pro se* Defendant Gregory Tift for a bill
16 of particulars (Dkt. No. 62), motion for an extension of time to reply (Dkt. No. 69), and motion to
17 strike surplusage from the indictment (Dkt. No. 63). Having thoroughly considered the motion and
18 the relevant record, the Court hereby DENIES the motions for the reasons explained below.

19 **I. BACKGROUND**

20 In fall 2020, Defendant Gregory Tift was indicted for conspiracy to distribute controlled
21 substances and possession of controlled substances with intent to distribute. (Dkt. No. 3.) The
22 superseding indictment alleges that Mr. Tift and others possessed—and knowingly and
23 intentionally conspired to distribute—controlled substances including fentanyl,
24 methamphetamine, amphetamine, and MDMA. (*Id.* at 1–2.)

25 **II. BILL OF PARTICULARS**

26 Mr. Tift seeks a bill of particulars specifying the date he and others allegedly entered the

1 conspiracy, whether the alleged “detectable amount” of drugs is measured in composite or actual
2 weight, the nature of “foreseeable conduct” engaged in by other members of the conspiracy, and
3 the nature of the event(s) and statements the Government intends to rely on to prove its case.

4 (Dkt. No. 62 at 2–4.) In appropriate circumstances, the Court can order the Government to
5 produce such a bill. Fed. R. Crim. P. 7(f); *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir.
6 1984). However, this matter does not present such circumstances.

7 The purpose of a bill of particulars is “to minimize the danger of surprise at trial and to
8 provide sufficient information on the nature of the charges to allow preparation of a defense.”
9 *Mitchell*, 744 F.2d at 705. It is appropriate where an indictment is insufficient to permit the
10 preparation of an adequate defense.” *United States v. DiCesare*, 765 F.2d 890, 897 (9th Cir.
11 1985). But a “defendant is not entitled to know all the evidence the [G]overnment intends to
12 produce . . . only the theory of the [G]overnment’s case.” *Cook v. United States*, 354 F.2d 529,
13 531 (9th Cir. 1965). Here, the superseding indictment clearly establishes the Government’s
14 theory of its case: It specifies the primary area where Mr. Tift allegedly conspired to distribute
15 and possess illegal substances, as well as the names and amounts of those substances. (See Dkt.
16 No. 41 at 1–2.) Further, Mr. Tift has received full discovery, which “obviates the need for a bill
17 of particulars.” *United States v. Giese*, 597 F.2d 1170, 1180. (9th Cir. 1979). The discovery
18 included, among other information, application details for the various surveillance techniques
19 used by the Government, search warrant applications for Mr. Tift’s residence and the residence
20 of an alleged coconspirator, laboratory reports, and the statement of a coconspirator. (See Dkt.
21 No. 65 at 4.) This is sufficient to apprise Mr. Tift of the Government’s theory of its case.

22 The information Mr. Tift seeks, such as the names of unknown informants or the
23 evidence upon which the Government intends to rely on to prove the element of knowledge (Dkt.
24 No. 62 at 3), would ostensibly constitute *evidentiary details*, which do not properly warrant a bill
25
26

1 of particulars.¹ See *United States v. DiCesare*, 765 F.2d 890, 897 (9th Cir. 1985) (citing *United*
 2 *States v. Long*, 449 F.2d 288, 294–95 (8th Cir. 1971), for proposition that seeking the date a
 3 conspiracy allegedly began does not warrant bill of particulars), *see also United States v.*
 4 *Kendall*, 665 F.2d 126, 135 (7th Cir. 1981) (holding that a defendant “has no right to know the
 5 details of the evidence to be introduced by the Government”). Accordingly, the motion for a bill
 6 of particulars is DENIED.

7 **III. SURPLUSAGE IN INDICTMENT**

8 Mr. Tift further requests that the Court order the Government to strike as surplusage the
 9 use of the word “fentanyl” as a descriptor from the indictment. (Dkt. No. 63 at 2.)

10 “The Court on motion of the defendant may strike surplusage from the indictment or
 11 information.” Fed. R. Crim. P. 7(d). The purpose of Rule 7(d) is to protect a defendant against
 12 prejudicial or inflammatory allegations that are neither relevant nor material to the charges.
 13 *United States v. Terrigno*, 838 F.2d 371, 373 (9th Cir. 1988). Thus, the defendant must show that
 14 the language in the indictment is both irrelevant to the charges and prejudicial. *United States v.*
 15 *Laurienti*, 611 F.3d 530, 546–47 (9th Cir. 2010).

16 Mr. Tift argues the word “fentanyl” is “irrelevant as it does not tend to prove the charges
 17 made against Mr. Tift, but, rather, is an attempt to add prejudicial language that is not present in
 18 the Code.” (Dkt. No. 63 at 2.) He argues as the word is not contained in the United States Code
 19 and is simply a “buzzword.” (*Id.* at 3.) The Government counters that “fentanyl” is one of the
 20 substances Mr. Tift is charged with having possessed and distributed and is listed under Schedule
 21

22 ¹ Mr. Tift also requests an extension of time to reply the Government’s response on the grounds
 23 that he needed more time to review evidence provided by the Government to ensure it is
 24 complete. (See Dkt. No. 69.) As the Government notes, Mr. Tift never argues he was not given
 25 discovery or that specific discovery is missing. (See Dkt. No. 71 at 1–2 (citing Dkt. No. 69).) The
 26 Court FINDS that Mr. Tift has adequate notice of the Government’s theory of the case from the
 indictment, and the record supports his receipt of discovery from the Government. Additional
 time to review such discovery is not necessary to determine whether the bill of particulars that
 Mr. Tift has already moved for is warranted. The motion for an extension of time is DENIED.

1 II of 21 U.S.C. § 812. (Dkt. No. 70 at 3.) The name of a substance central to the Government's
2 allegations against Mr. Tift is clearly relevant to the charges. Mr. Tift points to no caselaw where
3 the Court has found otherwise. His motion to strike is thus DENIED.

4 **IV. CONCLUSION**

5 For the above reasons, Defendant's motion for a bill of particulars (Dkt. No. 62), his
6 motion for an extension of time to reply to the Government's response (Dkt. No. 69), and his
7 motion to strike surplusage from the indictment (Dkt. No. 63). are DENIED.

8 DATED this 24th day of February 2022.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



John C. Coughenour
UNITED STATES DISTRICT JUDGE